

[original dated 1/6/04]

Celeste Cantú, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Dear Ms. Cantú:

The Environmental Protection Agency (EPA) has reviewed the amendment to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan) modifying the language addressing the federal antidegradation policy and State Water Resource Control Board (SWRCB) Resolution No. 68-16 "Statement of Policy with Respect to Maintaining High Quality of Water in California". I am pleased to inform you that we are approving this amendment.

The subject amendment was adopted by the Central Valley Regional Water Quality Control Board (CVRWQCB, Regional Board) on September 6, 2002 under CVRWQCB Resolution No. R5-2002-0151. It was approved by the State Water Resources Control Board (SWRCB) on September 16, 2003 under SWRCB Resolution No. 2003-0059, approved by the California Office of Administrative Law on November 6, 2003, and submitted to EPA on December 10, 2003. The amendment revises the third paragraph of Item 2 under "Control Action Considerations of the State Water Board" on Page IV-8.00 as follows:

*"USEPA water quality standards regulations require each state to adopt an 'antidegradation policy and specify the minimum requirements for the policy (40 CFR 131.12). Resolution No. 68-16 preceded the federal policy and applies to both ground and surface waters. The State Water Board has interpreted State Water Board Resolution No. 68-16 to incorporate the federal antidegradation policy. The Regional Water Board implements Resolution No. 68-16 consistent with the federal antidegradation policy **where the federal regulations apply**. Resolution No. 68-16 applies to both ground and surface waters of the state. Therefore, the federal antidegradation policy must be followed where it is applicable. The federal antidegradation policy applies if a discharge or other activity, which began after 28 November 1975, will lower surface water quality. Application of the federal policy may be triggered by water quality impacts or mass loading impacts to receiving waters. Resolution No. 68-16 is Appendix Item 2; the federal policy is Appendix Item 39."*

Today's Action

Section 303(c) of the CWA requires EPA to approve or disapprove new or revised state-adopted water quality standards. The State regulatory provisions that are subject to EPA's approval authority under Section 303(c) are those addressing antidegradation, beneficial uses, water quality criteria, and implementation of water quality standards for surface waters.

EPA has determined that the above Basin Plan amendment is subject to EPA's section 303(c) approval authority. Pursuant to CWA section 303(c) and the implementing federal regulations at 40 CFR 131, EPA hereby approves this amendment. EPA's approval is based on our finding that the amendment is consistent with the requirements of the CWA and EPA's regulations at 40 CFR 131.5 and 131.6.

Public Participation

EPA compliments the State on its efforts to include the public in the development and review of new and revised water quality standards. Public involvement is an integral component of a successful water quality program. Based upon our review, the public review procedures followed by the State in the development of Regional Board Resolution No. R5-2002-0151 and State Board Resolution No. 2003-0059 are consistent with the procedural requirements for public participation in triennial reviews, adoption, and revision of state water quality standards.

ESA Consultation with the Services on EPA's Action

Section 7(a)(2) of the Endangered Species Act states that each federal agency shall ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. EPA has determined that today's action will have no effect on any federally listed threatened or endangered species or critical habitat.

Relationship of Today's Action to Previous Actions on Amendments to the Basin Plan

Today's action resolves disapproval item 3 of EPA's May 26, 2000 action on Basin Plan amendments adopted by the Regional Board on March 31, 1989 under CVRWQB Resolution No. 89-56 (approved by the State Board on March 22, 1990 under SB Resolution No. 90-28). Those amendments had provided an incomplete and misleading interpretation of the federal antidegradation policy. Disapproval items 1 and 2 of our May 26, 2000 action remain to be resolved.

EPA's last action on this basin plan was taken on October 15, 2003, at which time we approved the water quality standards provisions of State Board Resolution No. 2003-007 (re: Regional Board Resolution No. R5-2002-0127). Today's action does not alter the conditions and interpretations of our previous water quality standards action letters of December 30, 1975,

May 28, 1976, June 2, 1976, September 20, 1984, August 7, 1985, April 13, 1990, May 24, 2000, May 26, 2000, September 26, 2003, and October 15, 2003 for this basin plan.

Water Quality Standards Applicable to the Sacramento River and San Joaquin River Basins

The federally-approved water quality standards applicable to the Sacramento River and San Joaquin River Basins are now embodied in the following documents:

- Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition, 1998, as amended by CVRWQCB Resolution No. R5-2002-0207, CVRWQCB Resolution No. R5-2002-0127 (as approved by State Board Resolution No. 2003-007), and CVRWQCB Resolution No. R5-2002-0151 (as approved by State Board Resolution No. 2003-0059);
- Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California, as amended by State Board Resolution 75-89, September 1975;
- Water Quality Control Policy for the Enclosed Bays and Estuaries of California, May 1974;
- Resolution 68-16, Statement of Policy with Respect to Maintaining High Quality of Waters in California, as supplemented by State Board Order No. WQ 86-17;
- Memorandum to Regional Board Executive Officers from State Water Resources Control Board, Subject: Federal Antidegradation Policy. Oct. 7, 1987;
- Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (1995 Bay/Delta Plan), SB Resolution 95-24, May 1995; and
- Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California, 2000.

The following federally promulgated standards are also applicable to these waters:

- Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States' Compliance Final Rule, 40 CFR 131.36, as amended May 4, 1995;
- Water Quality Standards for Surface Waters of the Sacramento River, San Joaquin River, and San Francisco Bay and Delta of the State of California (40 CFR 131.37) applicable to waters specified in the Water Quality Control Plan for Salinity for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, adopted by the California State Water Resources Control Board in State Board Resolution No. 91-34 on May 1, 1991; and
- Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic

Pollutants for the State of California, Final Rule (the California Toxics Rule or CTR), 65 FR 31681, May 18, 2000.

EPA commends the Central Valley Regional Board staff for its excellent work in clarifying the relationship between the federal and State antidegradation policies as they apply to the Sacramento River and San Joaquin River Basins . If there are any questions regarding EPA's action, please contact Kathleen Goforth, of my staff, at 415-972-3521. As always, EPA looks forward to continued cooperation with the State in achieving our mutual environmental goals.

Sincerely,

[original signed by]

Alexis Strauss
Director, Water Division

cc: Thomas R. Pinkos (CVRWQCB)
Stan Martinson (SWRCB)
Claudia Fabiano (Mail Code 4305)